IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3982 OF 2005

1. Anandrao Yashwantrao Nalawade
& ors. .. .. Petitioners

V/s.

1. The State of Maharashtra
& ors. .. .. Respondents

Mr.M.L. Patil for petitioners.

Mr.R.M.Patane, AGP for res.Nos. 1 to 4.

Mr.Prashant Naik with Mr.Amit Borkar for res.No.5.

respondent Nos.6 to 20 are served.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 22nd & 25th July 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. This petition is filed seeking a writ of mandamus against the State of Maharashtra and its officers (and particulars against Commissioner for Sugar) to either appoint an Administrator or a Board of Administrators to respondent No.5-Sugar Co-operative factory situated at Sangli, of which respondent Nos.6 to 20 are its Directors. The prayer is made since elections to respondent No.5-Sugar Co-operative factory are not being held although the statutory period of 5 years is over long back. The petitioners are the members of respondent No.5-Sugar Co-operative factory. The

interim prayer is also to the same effect. The State of Maharashtra, Secretary, Co-operatives, Commissioner for Sugar and Collector of Sangli, are respondent Nos.1 to 4, respectively. The Commissioner for Sugar is also the Registrar in Sugar Co-operatives under the Maharashtra Co-operative Societies Act, 1960.

2. Looking to the prayers in this petition, we were of the view that the petition should be disposed of at the admission stage itself inasmuch as any interim order would almost amount to allowing the petition and, therefore, a notice was given recording that, if possible, the petition will be heard finally at the admission stage.

3. A reply has been filed on behalf of respondent No.5 one Mr.Vikramsingh Sarnobat, its incharge Managing Director, to which the 1st petitioner has filed a rejoinder. One more affidavit is filed by one Mr.Vasant Kumbhar, Assistant Legal Officer of respondent No.5. An affidavit is filed by one Mr.S.A.Thorat, Regional Joint Director, Sugar, Kolhapur on behalf of respondent Nos.1 to 3 and one more by one Mr.M.G. Gadhve for Commissioner for Sugar, respondent No.3.

4. We have heard the learned Counsel for all the parties.

5. The petition makes a grievance that this Sugar factory, which was once upon a time a leading sugar factory in this area, is in financial difficulties and is suffering from mis-management for last few years. The cultivation of sugar in its area of allotment and the actual crushing of the sugarcane have gone down. At page 12 of the petition, there is a letter written by the Joint Director of Sugar, Kolhapur recording that as per the information made available by the Sugar factory during crushing season of 2003-2004 sugar cultivation within its area of operation was 7330 Hectares. Out of this area, respondent No.5-Sugar factory crushed the sugarcane cultivated in an area of only 310 Hectares. Thus, the factory crushed only 14503 Metric Tonnes of sugarcane as against 5.70 lakhs Metric Tonnes sugarcane which was actually available to the factory. In the year 2004-2005, sugarcane was cultivated in 8476 Hectares and the production of the sugarcane was 3.50 lakhs Metric Tonnes. However, no crushing activity was conducted in the year 2004-05. This is because

the factory has been closed down.

6. In these circumstances, when some of the members wrote to the Joint Director Sugar, Kolhapur, by their letter dated 24th May 2005, asking for appointment of an Administrator, a reply was sent on 31st May 2005 that an inquiry under Section 83(1) of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act", for short) was being conducted. However, no specific answer was given to the request for appointment of an Administrator. Another letter dated 21st May 2005 was addressed to the Collector of Sangli (respondent No.4) with copies thereof to the Commissioner of Sugar in which it is stated that the term of this sugar factory was getting over on 5th June 2005. The factory was not functioning. During the last year, no sugarcane was crushed and thousands of farmers, employees, agriculturists and transporters had suffered. Para 8(g) of the petition states that this factory has 34,000 sugar cultivators in its area who are suffering. Therefore, it was high time that an Administrator or a Board of Administrators should be appointed for this factory.

7. Mr.Patil, learned Counsel appearing for

the petitioners, submitted that all these circumstances clearly show the mismanagement of the factory and not holding the elections to the Co-operative Society when the term was over. In spite of drawing attention of the statutory Authorities, they were not taking the necessary steps. All this has led the petitioners to file the present petition against the State and its officers seeking a writ of mandamus to either appoint an Administrator or a Board of Administrators for this sugar factory. He submitted that, as shown from the correspondence, all these factors were brought to the notice of the Authorities concerned and yet they have declined to take any action. Therefore, the petitioners were left with no alternative but to approach this Court. He has pointed out that there is no dispute that the term of the present Board of Directors was over on 5th of June 2005. Section 73-G(2) of the MCS Act provides that when the election of all the members of the Committee is held at the same time, the members are to hold the office for a period of 5 years. This period can be extended by one more year under the same sub-section. Sub-section (2B) of Section 73-G provides that if for any reason whatsoever the election could not be held before the expiry of

this period of 5 years or the extension of one year, the members of the Committee shall cease to hold their offices and shall be deemed to have vacated their offices. On the other hand, proviso to this sub-section lays down that where the failure to hold the election is on the part of the Collector, the Committee should not suffer and the Committee shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted Committee.

8. The material section for our purpose is sub-section (2B) and the proviso of Section 73-G. This sub-section (2B) and the proviso read as follows:-

> " **73-G. Provision for conduct of elections to committees (and of officers) of certain societies and term of office of member of such committees.**
>
> (1) .....
>
> (2) When the election of all the members of the committee of any such society is held at the same time, the members elected

on the committee at such general election shall hold office for period of five years from the date on which the first meeting is held, unless the period is extended by the State Government, for reasons to be recorded in writing, for a period not exceeding one year so however that the total period does not exceed six years in the aggregate.

(2A) The term of office of the members who are appointed or nominated or co-opted or selected or elected on the committee including to fill the vacancy shall be co-terminus with the terms of office of the elected members under sub-section (1), notwithstanding the date of their such appointment, nomination, co-option, selection or election including to fill the vacancy.

(2B) Where, for any reason whatsoever, the election of the members of the committee was not held or could not be held before the expiry of the term or the extended term, as the case may be, of the existing committee, **the members** (including the

officers of the committee **shall cease to hold office on the expiry of its term or extended term,** as the case may be, **and they shall be deemed to have vacated their offices :**

Provided that where the Collector fails to hold election to the committee of any such society, the term of office of the members of the committee of that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly constituted committee. "

(emphasis supplied)

9. The case of the petitioners is that it is the committee which has failed to hold the elections whereas the case of the Sugar factory and its Directors is that it is the Collector who has failed in holding the elections in time.

10. The other relevant section for our purpose is Section 73-H amongst others. Sub-section (1) of this Section 73-H provides that it is the duty of the committee of every Society to arrange to hold the election before expiry of the term.

Sub-section (2) thereof lays down that where there is a willful failure on the part of the committee to hold the election in time, the committee shall cease to function and the Registrar may either take over the administration himself or appoint an Administrator. The prayer in this petition is relatable to this Section 73-H of the MCS Act read with Section 77A. Sub-section (1)(b) of Section 77A is in two parts. It provides that where the Registrar is satisfied that the term or extended term of committee has expired or the election is held and there is a failure to elect the members to fill the vacancies, then the Registrar may either suo motu or on the application of any member, appoint any member to fill the vacancies or a committee consisting of not more than three members or one more Administrator to manage the affairs of the Society. The first proviso to this sub-section requires the Registrar to invite objections and suggestions whereas the second proviso lays down that where an immediate action is required, it is not necessary to publish any such notice in a given case. The above-referred Section 73-H is quoted below:-

> " **73-H. Responsibility of committee to hold election before expiry of term.**

> (1) It shall be the duty of the committee of every society to arrange for holding the election of its members before the expiry of its term.
>
> (2) Where there is a wilful failure on the part of the committee to hold election to the committee before the expiration of its term, the committee shall cease to function on the expiration of its term and the members thereof shall cease to hold office and the Registrar may himself take over the management of the society or appoint an Administrator (who shall not be from amongst the members of the committee the term of which has so expired) and the Registrar or Administrator shall hold election within a period of six months and the committee shall be constituted before the expiration of that period. "

11. Then, we refer to the relevant rules which are known as "The Maharashtra Specified Co-operative Societies Elections to Committee Rules, 1971" ("these Rules" for short). Rule 4 of these Rules provides that a provisional list of

voters is to be prepared by every Society for the year in which the general election is due to be held. Persons who are members as on the 30th June of the year immediately preceding the year in which such election is due are to be included in the provisional list. Sub-rule (2) of these Rules casts a responsibility on the Society to forward four copies of the authenticated provisional lists of voters to the Collector through the District Deputy Registrar before the 15th July of the year in which the general election is due. Rule 4(3) provides that if any Society fails to send a list by 15th July, the Collector shall prepare the provisional voters' list and Rule 4(4) provides that he shall publish the list by 23rd July of the particular year.

12. In the present case, it is placed on record that the last election was held in the year 2000 and the committee took over on 6.6.2000. The new committee was to be appointed by 5th June 2005. Hence, necessary steps were initiated by the Collector way back in October 2004. At page 44 of the petition, there is, however, a letter dated 9th February 2005 sent by the Managing Director and the Chairman of the sugar factory to the State Minister of Co-operation. This letter

seeks an extension of one year for this sugar factory. In para-2 of this letter, it is stated that during the years 2003-04 and 2004-05, the factory could not work either fully or partially. In para-5 of this letter, it is stated that almost all the workers of the factory are given lay off and its financial condition is very bad. (The petition states in para 6(g) that the factory has 3500 employees who are not paid salaries for 15 to 16 months). Thereafter, it is stated that for conducting the elections an amount of Rs.25 to Rs.26 Lakhs will have to be made available to the Collector, Sangli, and the factory is not having even that much capacity. Para-6 of this letter states that the members of the factory are situated in the District of Sangli and Kolhapur and in some 5 Talukas thereof. It will require good time to finalise the uptodate list of voters. The Co-operation Department has extended the period of holding of the elections until 22nd March 2005 by an earlier Notification dated 22nd November 2004. Para-8 of this letter states that monsoon is rather irregular and, therefore, a request is made that the elections be postponed by one year and in the meanwhile the present Managing Committee be extended by one more year.

13. The above-referred Government Notification extending holding of the elections issued on 22nd November 2004 is annexed to the petition. It records that it is necessary to extend holding of the elections by four months. The ground given is that the crushing season was still going on and, therefore, those factories where the list of membership was not finalised or where there are no specific orders directing holding of the elections, the elections be postponed. This Notification was issued by exercising the powers of the State Government under Section 73 IB of the MCS Act. Thereafter, another extension is given by the State Government by issuing a Notification on 17th June 2005 under the same section. This Notification provides that monsoon normally starts sometimes in June in the State of Maharashtra and remains until September and it will be desirable not to hold the elections during the monsoon period. The Notification, therefore, permits that those factories where the voters' list is not finalised or where there are no specific orders of either the High Court or the Supreme Court directing holding of the elections, all such elections be postponed till 30th of September 2005 or until further orders of the Government whichever is earlier. The petitioners have

challenged the validity of this Notification by submitting that there is no substance in this ground, namely, that because there is monsoon during this period, the elections need not be held. Mr.Patil submitted that if there was any difficulty during the monsoon, that difficulty posed problems for all other Sugar factories also. The Sugar factories where the membership list was not ready, could not be said to be in particular difficulty because of monsoon.

14. At page 51 of the petition, there is another letter dated 9th May 2005 of the sugar factory addressed to the Collector. It records that its members are spread in 2 Districts, 6 Talukas and 150 villages and, therefore, it is not possible to finalise the voters' list. As against that, there is an order of the Collector on the next date appointing the District Deputy Collector, Co-operative Societies, to finalise the voters' list under Rule 4(3) mentioned above. In fact, what we find is that the Collector has published the programme with respect to preparation of the provisional list of voters and then inviting objections and finalising the same. That programme is published on 10th May 2005 and the final list is ultimately published on 24th

June 2005. Mr.Patil, therefore, submits that all these circumstances clearly point out that the sugar factory was absolutely unwilling to hold the elections for no justifiable reasons, as against which the Collector did move to hold the elections by taking the necessary steps from time to time and ultimately publishing the voters' list.

15. As stated above, the stand of the sugar factory is that it is not responsible for the kind of situation in which it is landed. It blames the Collector for not holding the elections and for not demanding Rs.25 Lakhs for elections and states that the Committee cannot be held to be unwilling to hold the elections. Alternatively, however, it is submitted that if this Court directs, the sugar factory will deposit Rs.25 to Rs.26 Lakhs with the Collector and the elections be directed to be held under the present Committee. The State Government has filed two affidavits. In the affidavit filed by one Mr.S.B. Thorat, Regional Joint Director Sugar, Kolhapur Region, Kolhapur, it is stated that since respondent No.5-sugar factory has furnished the list of voters to the Collector, there is no willful default on the part of the sugar factory. The other affidavit of one Mr.Gadhave, Assistant Director of Sugar, Pune,

justifies the extension of the elections till 30th of September 2005 on the ground of monsoon and that this is in the interest of public. It further states that since the agricultural work is going on, postponement is in the interest of the members. Mr.Patne, learned Assistant Government Pleader, however, fairly stated that though these are the affidavits made by the Government officers, no fault can be found with the Collector, who, according to him, has taken the necessary steps in time.

25th July 2005

16. Mr.Patil, learned Counsel appearing for the petitioner, has drawn our attention to a Division Bench judgment of this Court in the case of **Jayram Sakharam Pachore & ors. vs. State of Maharashtra & ors. reported in 2000(4) Mh.L.J. page 255**. This judgment was rendered when there did not exist the proviso to Section 73-G (2B). That proviso rests the responsibility on the Collector if he fails to hold the elections in time. In that case, it is laid down that the Committee will not be responsible. However, what the judgment lays down with respect to Section 73-G(2B) is relevant for our purpose. In para-8

of this judgment, the Division Bench observed as follows:-

> " 8. Section 73G(2B) of the Act stipulates that where, for any reason whatsoever, the election of the members of the committee was held or could not be held before the expiry of the term or the extended term, as the case may be, all the existing committee members, including the officers of the committee, shall cease to hold office on the expiry of its term or extended term, as the case may be, and they shall be deemed to have vacated their offices. The operation of these provisions is automatic on expiry of the original term or the extended terms, as the case may be. "

Thereafter in para-10, the Division Bench explained the co-relation between Section 73G(2B) and Section 77A. It has been explained that whereas Section 73G(2B) deals with the first stage in the event of failure to hold elections, Section 77A deals with the second stage to take over the administration. It is pointed out in this paragraph that the order passed by the Division

Bench in this behalf was left undisturbed by the Apex Court in an SLP. The relevant observations in para-10 read as follows:-

> " 10. Section 73G(2B) read with section 73G(2) of the Act states that on expiry of the original tenure or the extended tenure, the outer limit being of six years, the elected members cease to hold office of the managing committee. However, these provisions do not stipulate any alternative arrangement for the administration of the society in that eventuality namely when the elected members cease to hold office on completion of their original term or extended term. Such an issue had also come up for our consideration in the case of "Ratnakar Anand Daste and others vs. State of Maharashtra and others", Writ Petition No.1136 of 2000 and we had relied upon the provisions of section 73H of the Act which states that the committee shall cease to function on the expiry of its term and the members thereof shall cease to hold office and the Registrar may himself take over the management of the society or appoint

an Administrator who shall not be from amongst the members of the committee, the term of which has so expired and the Registrar or Administrator shall hold the elections within a period of six months and the committee shall be constituted before the expiration of that period. This provision empowers the Registrar, at the first instance, to take over the administration of the society, which includes a specified society as well and in the second stage it empowers the Registrar to appoint an Administrator. Section 77A empowers the State Government or the Registrar to appoint a new committee or Administrator or constitute a committee by following the procedure as laid down therein. Our order dated 18th April, 2000 in Writ Petition No.1136 of 2000 was challenged before the Supreme Court and the S.L.P. came to be rejected. "

17. Mr.Patil submits that the present case warrants a similar action. Mr.Patil referred to another Division Bench judgment in the case of **Durga Mazdoor Co-operative Society Ltd., Bhandara**

& ors. vs. Divisional Joint Registrar, Co-operative Societies, Nagpur & ors. reported in 2000 (4) Mh.L.J. page 786 which is to the effect that when any such appropriate action is taken under Section 73H read with Section 77A of the MCS Act, a member or a Board of Directors of the committee, whose term has expired, is not to be appointed as an Administrator.

18. On the other hand, Mr.Naik, learned Counsel appearing for respondent No.5-Sugar factory, drew our attention to an unreported decision dated 22nd June 2004 in Writ Petition No.4715 of 2004 in the case of **Gulabrao Bajirao Patil & anr. vs. State of Mah. & ors.** where the Notification dated 8th June 2004 postponing the elections on the earlier occasion on account of assembly elections for a period of four months under Section 73-I-B was under consideration. The Division Bench took note of that notification and held in para-3 that in view of the postponement of the election process, no relief can be granted to the petitioner. Mr.Naik submitted that in the present case also, there is a Notification dated 17th June 2005 issued by the State Government postponing the election on the ground of rainy season. In his submission, similar treatment

should be given to the present Notification dated 17th June 2005.

19. We have considered the submissions of both the Counsel. Mr.Naik has firstly submitted that there is no delay on account of the Sugar factory and in any case, this notification makes an exception in the matter of holding the elections. Now, having seen the facts as narrated above, we find that the Sugar factory has put up lame excuses not to hold the elections. It was known to the Managing Committee that the term of the Sugar factory was getting over on 5th June 2005. It has also come on record that during the last two years, the collection of sugarcane and crushing thereof has gone down and during the last year the factory has not worked at all. The Sugar factory tried to seek extension from the Government by writing to the Authorities from time to time and as seen from the correspondence referred to earlier, excuses are sought to be made out, namely, that the members are spread over or that the workers are given lay off and that the Sugar factory is not in a position to spend Rs.25 Lakhs for the elections. Last but not the least is the ground that the farmers will be busy during the monsoon. Now, as far as the ground of lay off

to the workmen is concerned, that is a situation of the creation of the present Management where it did not run the factory during the last year. As regards the members being spread in the different villages, that is a situation which is known to the Management. The Sugar factory has its membership registered and it is the responsibility of the Authorities to up-date the membership knowing fully well that the election is to be held. In any case, as narrated above, the Collector sought the necessary information from the Sugar factory and has published the final list of voters on 24th June 2005. This is not disputed by Mr.Naik. Therefore, this cannot be a ground to say that the election cannot be held and it proves the case of wilful failure on the part of the factory to hold the election.

20. The election to this Sugar factory and other Co-operatives have been held from time to time in the month of June and even the present Government Notification permits other Sugar Co-operatives to go ahead in monsoon where the voters' lists are not finalised or where there are orders of the High Court or Supreme Court. Surely, if monsoon is a difficulty, that difficulty will be faced by members of such

Co-operatives also. Therefore, there is no rationale in taking this pretext which respondent No.5 has sought to take it and also in the Notification which the State Government has issued. Even Section 73-IB mentions scarcity, drought, flood, fire or any other natural calamity or rainy season or such other reasons as are exceptional as grounds for postponing the elections. The section provides that where any of these difficulties are in the opinion of the State Government exceptional and it is not in public interest to hold elections, the Government may postpone the same. In our view, therefore, the Government Notification cannot be pressed into service to postpone the election on this ground. There is nothing exceptional in rainy season unless the rains are exceptionally heavy in a particular year. The notification is, therefore, bad. The judgment in **Gulabrao Patil (supra)** will not help Mr.Naik which was in the case of a legitimate postponement on account of assembly elections. That is not the case here where the Notification cannot be postponed under Section 73 I.B. In any case, Mr.Naik submitted that respondent No.5 has offered to make payment of Rs.25 Lakhs to the Collector for the purpose of holding the elections and the Sugar Co-operative

has no objection as such to the holding of the elections. His only submission is that the present Managing Committee ought to be continued in Management and the elections be directed under its control.

21. With respect to this submission of Mr.Naik, we have to note the mandate of Section 73-H of the MCS Act. It is clear that if the election is not held before expiry of the period for which the Committee is constituted, the committee has no authority to function any further. That is also the law laid down by the Division Bench in **Jayram Sakharam's case (supra)**. The section clearly provides that the committee shall cease to function on the expiry of its term and the member thereafter shall cease to hold office. This statutory provision is known to the committee members. It is, therefore, their duty to see to it that the election is held in time. If they do not hold the elections in time, their authority comes to an end. It is only to avoid the resultant vacuum that Section 73-H(2) provides that in view of the eventuality, the Registrar may take over the management and appoint an Administrator. When we read this section with Section 77A(ii), we find that the Registrar can

appoint a committee of three members of the Society or one or more Administrators who need not be members of the Society to manage its affairs till the new Committee enters upon the office. In the facts and circumstances of this case, in our view, therefore, it is just and necessary that respondent No.3- Commissioner for Sugar, who is Registrar for purposes of Sugar Co-operative, ought to be directed to take over the management of the Society and appoint a committee of three Administrators to run its administration until the election is held. One of the three members should be a nominee of the Collector of the rank of not less than Deputy Collector, the second member the District Deputy Registrar of Co-operatives at Sangli and the third member will be the present Managing Director of respondent No.5-Sugar factory. The Collector's nominee will be the Chairman. Mr.Sarnobat is the present Managing Director and has filed an affidavit opposing this petition. Hence, we asked Mr.Patil, learned Counsel appearing for the petitioner, as to whether the petitioner would like any other person to be nominated. Mr.Patil has left it to the Court to appoint an appropriate person including Mr.Sarnobat, if the Court deems fit.

22. In the circumstances, we allow the petition and direct respondent No.3-Commissioner for Sugar, Maharashtra State, Pune, to appoint a committee of three Administrators to take over the Management of respondent No.5-Sugar factory until the elections thereof are held and thereafter to hand over the Management to the elected body. The three Administrators will be (1) a Deputy Collector nominated by the Collector, Sangli, who will be the Chairman of three members' committee, (2) District Deputy Registrar of Co-operatives, District Sangli and (3) the present Managing Director of respondent No.5-Sugar factory. The committee will forthwith proceed to take steps for election and take over management in the meanwhile.

23. The petition stands disposed of. There will be no order as to costs.

24. Mr.Naik, learned Counsel appearing for respondent No.5-Sugar factory requests for stay of this order for a period of four weeks. Mr.Patil, learned Counsel appearing for the petitioner, points out that once the term of the committee is over, the committee cannot make any such prayer. We accept the objection of Mr.Patil. The request

for stay is rejected.

25. The Commissioner for Sugar and all other functionaries will act forthwith on an authenticated copy of this order.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)